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IN THE
COURT OF APPEALS OF INDIANA

DEBBRA K. JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0605-CR-253
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0505-FB-80961

February 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Debbra Jackson appeals the sentence imposed by the trial court after she pleaded guilty to one count of burglary as a class C felony.

We affirm.

ISSUE

Whether Jackson's sentence is inappropriate.

FACTS

On May 20, 2005, the State charged Jackson with burglary, as a class B felony; theft, as a class D felony; and resisting law enforcement, as a class A misdemeanor. On October 27, 2005, Jackson tendered to the trial court a plea agreement between herself and the State. Therein, Jackson agreed to plead guilty to the lesser charge of burglary as a class C felony, the State would forgo prosecution on the theft and resisting charges, and sentencing would be open to the court.

At the hearing on October 27th, the trial court advised Jackson of the rights she was giving up by pleading guilty and that she faced a possible sentence of two to eight years. The trial court also confirmed that Jackson was making the plea voluntarily. The State then described the factual basis as follows:

> . . . On May 13th and 14th of 2005, Gregory McBride was in his apartment and saw this Defendant, Debbi Jackson, along with Versie Hall on at least one occasion, taking belongings out of the apartment of Shannon Morgan, which was 1221 Community Place, Apartment C. And – it's Shannon and Mike Morgan, actually. And putting it in vehicles. He called – Mr. McBride called Mrs. Morgan and asked her – knowing that she had intended to move out soon – asked her if she had actually moved out yet. And she said no – and he informed her what had happened. And they – one of them called the police. The Deputy Gudat . . . responded and Mr.

> McBride actually pointed out this Defendant, Debbi Jackson as one of the suspects to the IPD. The Deputy approached Ms. Jackson, and she asked if he was there for the burglary across the courtyard. He stated he was and she stated that she's not the only – she wasn't the only one inside the residence. There were other people involved. She – Ms. Jackson admitted that she was in the apartment and had taken some items out of there, but she had heard from someone – not the apartment manager – not Ms. Morgan or anyone else – that Mrs. Morgan and Mr. Morgan had moved out and it was okay for her to take these things. She did not consent to go into that apartment or to take any of the items. Mrs. Morgan was on the scene and was taken to Ms. Jackson's apartment. They were let in by Ms. Jackson's husband and they found numerous articles of clothing and personal effects inside Ms. Jackson's apartment. Ms. Jackson did meet with the detective and give a statement. She did admit to taking all of the things that were out in plain view. Did not admit to taking jewelry or adult clothing. But, it was later found in Ms. Jackson's apartment, that there was some jewelry and adult clothing in her closet. There were signs of forced entry within the home – even though I don't – can't show that Ms. Jackson had anything to do with that. A back window was broken out and that's how the – whoever was in the apartment first – got in through a back broken window. And that window was on the floor of one of the bedrooms, when Ms. Jackson actually entered and took out what she had taken out. And many other personal effects, [a]long with goods and clothing and bathroom toiletries were still in the apartment when all of this stuff was taken. All this happened in Marion County, and it is against the laws of the State of Indiana.

(Tr.12-13). After being sworn to tell the truth, Jackson was asked by the trial court whether this was "the truth" concerning "what happened," and Jackson answered, "Yes." (Tr. 13). When further asked whether there was "anything" that Jackson "need[ed] to add, change or detract from his statement and version of what happened," Jackson answered, "No." (Tr. 13, 14). The trial court then found a factual basis and accepted Jackson's guilty plea.

On December 9, 2005, the trial court held the sentencing hearing. Jackson affirmed to the trial court that the presentence investigation report ("PSI") was accurate.

Jackson asked to make a statement, and testified that she was "sorry for what [she] did." (Tr. 26). Jackson also submitted a "statement concerning [her] conviction" as part of the PSI. Therein, she indicated that she was taking medication after having been diagnosed with bipolar disorder and manic depression shortly after the burglary, and that "with those diagnoses [she did] not think of the consequences of [her] actions." (PSI 9).

The State noted to the trial court that the facts admitted by Jackson -- burglary of the Morgans' home -- would constitute burglary as a class B felony, and that she had a previous criminal conviction; it asked for an eight-year sentence. Jackson's counsel asked that she "not be sentenced to any incarceration" but "allowed to stay home and take care of her daughter and . . . tend to her mental problems." (Tr. 28). Counsel further advised the trial court that the property taken had been returned, and noted that Jackson had "accepted responsibility" and had "apologized" to the court and the Morgans. (Tr. 29). The State responded that with respect to the Morgans' property being returned, according to the facts admitted by Jackson, she did not initially disclose the nature or location of all the property she had taken from the Morgans' home. The trial court found the parties "in dispute" concerning whether the return of the property was an appropriate consideration for sentencing. *Id.*

The trial court stated that it found "as aggravating the fact that [Jackson did] have a history of criminal activity," specifically, Jackson's "2000 conviction for attempted prescription offenses." (Tr. 30). It "consider[ed] as mitigating, the fact that she did accept responsibility by entering" the guilty plea. *Id.* It then sentenced Jackson to six years, with three years suspended.

DECISION

Jackson argues that the sentence imposed by the trial court, "two years more than the presumptive term," is "inappropriate in light of the nature of the offense and Ms. Jackson's character, particularly because the court failed to find significant mitigating circumstances clearly supported by the record and considered a remote misdemeanor conviction as the sole aggravator." Jackson's Br. at 4. We cannot agree.

Although Jackson expressly challenges her sentence as inappropriate, she argues that the trial court improperly considered mitigating and aggravating circumstances. Sentencing lies within the discretion of the trial court. *Patterson v. State*, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). If a trial court imposes a sentence greater than the advisory sentence, it must explain its reasoning therefor. *Id.* The trial court is not required to find the presence of mitigating circumstances. *Id.* When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are indeed mitigating, and the trial court is not required to explain why it does not find the proffered factors to be mitigating. *Id.* The trial court's assessment of the proper weight of mitigating and aggravating circumstances is entitled to great deference on appeal and will be set aside only upon a showing of manifest discretion. *Id.*

Jackson argues that the trial court "overlooked" the following mitigating circumstances: her remorse; her mental health; and that her incarceration would cause severe hardship to her family. Jackson's Br. at 4, 6. Jackson's expression of remorse was extremely limited, and the sincerity of this expression was a matter of credibility – to

be assessed by the trial court. *See Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). The evidence of Jackson's mental health diagnosis was provided solely from her own written statement, wherein she indicated that its effect was to impair her appreciation of consequences – not that it impaired her ability to control or appreciate the wrongfulness of her conduct. Further, she presented no evidence that her condition would not be treatable during incarceration. *See Henderson v. State*, 848 N.E.2d 341, 345 (Ind. Ct. App. 2006). Finally, the PSI did indicate that Jackson contributed to the support of her household and that she had a daughter. However, there was no evidence that a sentence of six years would result in more hardship to her husband and child than would the advisory sentence of four years. *See Patterson,* 846 N.E.2d at 730. Therefore, we do not find that the trial court abused its discretion when it did not find these to be mitigating circumstances.

Jackson also argues that her previous conviction should not have been given significant weight because she had no criminal history until that conviction at age 29, and between that conviction on November 6, 2000, and the current offense in May of 2005, she had led a law-abiding life. According to the PSI, which she confirmed as accurate, after Jackson was found guilty of an attempted prescription offense, she was sentenced to 545 days at the Department of Correction, with this time suspended and ordered to probation for 365 days. However, a violation of probation was filed on September 24, 2001 due to two positive urine screens, and on February 5, 2002 her probation was terminated unsuccessfully and she subsequently served time in jail. Based on the evidence before it, and given the trial court's discretion to assess the proper weight to be

assigned aggravating circumstances, we do not find that the trial court abused its discretion when it found Jackson's criminal history to be an aggravating circumstance. *See Patterson*, 846 N.E.2d at 727.

Pursuant to Indiana Rule of Appellate Procedure 7(B), we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision," we find "that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In our review of sentences, we must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions. *Patterson*, 846 N.E.2d at 731. Nevertheless, Appellate Rule 7(B) does authorize our revision of a sentence when the conditions of the Rule are met. *Id.*

Regarding the nature of the offense, Jackson broke and entered the Morgans' home and took numerous items of personal property. The fact that her offense was perpetrated in the family's home is significant in assessing the nature of her offense. Further, although Jackson initially admitted her entry in the home and the removal of their property, she was less forthcoming as to the nature and location of the items she removed.

As to the character of the offender, Jackson does have a criminal history. Further, that criminal history reflects that she failed to successfully complete probation.

We also note that the agreement whereby Jackson pleaded guilty to the burglary as a class C felony offense initially provided to her a significant benefit, in that it reduced the potential advisory sentence from ten years to four years. Further, although the trial court imposed a six-year sentence, it suspended three years and ordered that Jackson

serve six months in the Community Corrections, followed by one year of work release and then one and one-half years of home detention.

After giving due consideration of the trial court's decision, we cannot say that Jackson's sentence is inappropriate.

Affirmed.

BAKER, J., and ROBB, J., concur.